

*ant*  
*A2* a tub attached to said canister; and

a dip condiment held within said tub;

wherein said kit has a space efficiency greater than about  $0.15 \text{ g/cm}^3$  and a chip to dip-condiment net weight ratio less than 2.

## REMARKS

### Information Disclosure Statement

In the office action, the Examiner states that the information disclosure statement fails to comply with the provisions of 37 CFR §§ 1.97, 1.98 and MPEP § 609 because the non-patent literature references do not disclose a publication date. The Examiner further states that in order to speed along prosecution, it will be assumed that the publication dates of these references (namely, the snack samples provided by Applicant and listed in his Table 1 of the specification) were sometime before the filing date of this application since they are described in the specification. The Examiner further notes that this would equate to either 35 U.S.C. § 102(a) or 102(b) publication dates--"In order to speed prosecution, both rejections will be made."

Applicants respectfully note that although the Examiner has declared Applicant's IDS to be non-compliant, the Examiner has in fact considered all of the non-patent literature references, their deficiencies notwithstanding. This is noted by 1) the Examiner's initialing of each of the non-patent literature references, 2) the Examiner's own statement of use of the references, and 3) the actual use of the references as is recounted in all of the 35 U.S.C. §§ 102(a or b) and 103(a) rejections in the Examiner's office action noted above.

Applicant also notes that Applicant's Attorney was unable to provide the "publication" dates of the non-patent references because each of the references is a sample of competitive product having its origin outside of the control of Applicant's Assignee, namely, Procter & Gamble. Further, Applicant's Attorney is not privy to the internal release dates of competitive product.

### Specification

The disclosure is objected to because of the following informalities: page 1, line 6 includes the docket number of the application.

Applicant has amended this informality and respectfully requests that the objection to the disclosure be removed.

### 35 U.S.C. § 102 Rejections

Claim 1 stands rejected under 35 U.S.C. § 102(a or b) as being anticipated by Snack-a-Dip. The Examiner notes that the Snack-a-Dip products teaches a kit comprising a canister containing a plurality of snack pieces, at least one of the snack pieces having a projected area of about 1330 mm<sup>2</sup>, an attached tub containing a dip condiment, the kit further having a space efficiency of about 0.126 g/cm<sup>3</sup>.

Applicants have amended Claim 1 to reflect that the average projected snack piece area is at least about 1300 mm<sup>2</sup>. Applicants point out that while perhaps one of the chips in a Snack-a-Dip container may have a snack piece area of at least 1330 mm<sup>2</sup>, the Snack-a-Dip container does not disclose an *average* snack piece area of at least 1330 mm<sup>2</sup>.

According to MPEP § 2131 a claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference. The identical invention must be shown in as complete detail as is contained in the claim. The elements must be arranged as required by the claim.

Applicants respectfully contend that since the element of the “average snack piece area of at least 1330 mm<sup>2</sup>” is missing from the Snack-a-Dip reference, the reference should be removed, and the rejection based upon a lack of novelty should be rescinded by the Examiner. Applicant therefore respectfully requests reconsideration and allowance of Claim 1 over the Examiner’s 35 U.S.C. § 102(a or b) rejection.

### 35 U.S.C. § 103 Rejection

Claims 2-3 and 17-19 stand rejected under 35 U.S.C. § 103 as being unpatentable over Snack-a-Dip in view of Yan Yan Snacks Meiji.

Applicants point out that neither the Snack-a-Dip product or Yan Yan product singly, or taken together, teach or suggest Applicant’s snack piece average projected area of 1330 mm<sup>2</sup>.

To establish a prima facie case of obviousness, three basic criteria must be met. First, there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings. Second, there must be a reasonable expectation of success. Finally, the prior art reference must teach or suggest all of the claim limitations. (MPEP § 2142).

As noted above both references fail to teach or suggest Applicant's snack piece average projected area of 1330 mm<sup>2</sup>. Since Claims 2-3 depend from Claim 1, this element is attributable to them as well and should therefore be allowable. Since amended Claim 17 contains this element, this element is attributable to dependant Claims 18-19 as well, and these claims should therefore also be allowable.

Applicants therefore respectfully request reconsideration and allowance of Claims 2-3 and 17-19 over the Examiner's 35 U.S.C. § 103(a) rejections.

Claims 7-12 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Snack-a-Dip in view of Bezek, et al. (U.S. Patent No. 6,472,007). Applicants have canceled Claims 7-12 without prejudice; thus, the Examiner's 35 U.S.C. § 103(a) rejection is obviated.

Claims 5 and 20 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Snack-a-Dip, in view of Yan Yan Snacks Meiji, as applied above, and further in view of Bezek '007.

As noted above, neither the Snack-a-Dip product or the Yan Yan product teach or suggest Applicant's 1330 mm<sup>2</sup> average projected area in his snack chips. Additionally, Bezek '007 does not teach or suggest Applicant's average projected area element. Without this element, Applicant respectfully contends that none of the references singly, or taken together, teach or suggest Applicant's invention. Applicant therefore requests reconsideration and allowance of Claims 5 and 20 over the Examiner's 35 U.S.C. § 103(a) rejection.

Claims 13-16 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Snack-a-Dip, in view of Bezek '007, as applied to Claim 12 and further in view of Yan Yan.

Applicant has canceled Claims 13-16 without prejudice. Therefore, the Examiner's 35 U.S.C. § 103(a) is now obviated.

Claims 4 and 6 stand rejected under 35 U.S.C. § 103(a) as being unpatentable over Snack-a-Dip, in view of Yan Yan, as applied to Claim 2, and further in view of Tostitos Chips & Salsa.

Applicants point out that neither the Snack-a-Dip product or Yan Yan product singly, or taken together, teach or suggest Applicant's snack piece average projected area of 1330 mm<sup>2</sup>.

As noted above, neither the Snack-a-Dip product or the Yan Yan product teach or suggest Applicant's 1330 mm<sup>2</sup> average projected area in his snack chips. Additionally, the

Tostitos Chips & Salsa product does not teach or suggest Applicant's average projected area element. Without this element, Applicant respectfully contends that none of the references singly, or taken together, teach or suggest Applicant's invention. Applicant therefore requests reconsideration and allowance of Claims 4 and 6 over the Examiner's 35 U.S.C. § 103(a) rejection.

### SUMMARY

All of the rejections in the Office Action have been discussed as have the distinctions between the cited references and the claimed invention.

In light of the discussions contained herein, Applicants respectfully request reconsideration of the rejections and their withdrawal, and all of the claims allowed.

Issuance of a Notice of Allowance at an early date is earnestly solicited.

Respectfully submitted,

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